

2-141A058

ITEL

May 19, 1992

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

RECORDATION NO. 16026-F FILED 145

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

MAY 20 1992 2:00 PM

INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 5

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$16 recordation fee.

Please record the subject Schedule under the Master Lease Agreement dated as of November 7, 1988, between Itel Rail Corporation, successor to both Itel Rail Corporation and Itel Railcar Corporation, and Brandywine Valley Railroad Company, which was filed with the ICC on November 14, 1988, under Recordation No. 16026.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Brandywine Valley Railroad Company (Lessee)
50 South First Street
Coatesville, Pennsylvania 19320

The subject Schedule adds to the Master Lease Agreement five (5) 52 foot, 100 ton GB gondolas bearing reporting marks BVRV 5746-5750.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

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NOTICE OF FILING ON

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SCHEDULE NO. 5
 INTERSTATE COMMERCE COMMISSION

This Schedule No. 5 to that certain Lease Agreement made as of November 7, 1988, as amended (the "Agreement"), between ITTEL RAIL CORPORATION ("Lessor"), as successor in interest to both Itel Rail Corporation and Itel Railcar Corporation, and BRANDYWINE VALLEY RAILROAD COMPANY ("Lessee") is made as of this 10th day of April, 1992.

Lessor and Lessee agree as follows:

1. **Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 5, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. **Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Reporting Marks and Numbers	Length	Inside Width	Height	Cubic Foot Capacity	No. of Cars
GB*	100-ton gondolas	BVRY 5746- 5750	52'	9'6"	4'6"	N/A	5

*to be modified to GBS as set forth in Section 12 below

3. **Commodities:** The Cars may be used to carry only the commodity Plate Steel (STCC 33-122-53).
4. **Term:**
 - A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all Cars described in this Schedule through the date which is 3 years from the earlier of (i) the date on which the last Car described on this Schedule is marked with Lessee's reporting marks or (ii) 60 days from the date on which the first of the Cars described in this Schedule is physically interchanged onto Lessee's lines "Initial Term". The Expiration Date shall be documented on the Certificate of Delivery Date. Unless Lessee, within 15 days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
 - B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, Lessee may, upon 60 days prior written notice, extend the Agreement with respect to the Cars on this Schedule from the day immediately following the end of the Initial Term through March 31, 2002 (the "Extended Term").
 - C. During the Term and the Extended Term, Subsection 3.C. of the Agreement shall not apply.
5. **Delivery:** When a Car has been remarked, it shall be moved to Lessee's railroad line at Lessee's expense at the earliest time that is consistent with the mutual convenience and economy of the parties. In order to move the Cars to Lessee's railroad line and to ensure optimal use of the Cars, Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders to

facilitate the movement of the Cars to other railroad lines in accordance with the Interstate Commerce Commission ("ICC") and the Interchange Rules.

6. Recordkeeper: Lessor

Lessee hereby authorizes Lessor on behalf of Lessee to subscribe to Lessee's Train 62, 65, 67, 71 and 80 and other Car Location Movement Records ("CLM's") from the AAR with respect to the Cars and agrees to execute any documents necessary to implement such authorization.

7. Car Hire Payables: Lessee shall transmit or cause to be transmitted to the AAR Lessee's car hire payable records in a format acceptable to the AAR so that such records will be included in the monthly AAR Car Hire Exchange Tape. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables.

8. UMLER: Lessee shall provide Lessor with the UMLER passkey with respect to the Cars and hereby authorizes Lessor to receive the UMLER fleet tape for the Cars.

9. Car Hire Accounting for Other Equipment: Lessor shall perform car hire accounting for any equipment not leased from Lessor but bearing the same reporting marks upon terms set forth in a separate car hire service agreement containing reasonable and customary terms.

10. Running Repairs Invoice: Lessee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Lessee or by another railroad which has been billed and received payment therefor from Lessee.

11. Party Responsible for Maintenance: Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described on this Schedule, except as set forth in Section 5 of the Agreement and Section 12 of this Schedule. With respect to the Cars described in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

12. Modification:

A. The parties agree that Lessee may modify each Car to a GBS mechanical designation by adding a steel rack for wide plate loading ("Rack") as noted by "Rack Application For Wide Plate Loading" Drawing #158-11-76 (the "Drawing"). Lessee shall be responsible for all costs associated with the application, removal and maintenance of each Rack. At the end of the Agreement with respect to this Schedule No. 5, each Rack will be removed at Lessee's expense. The exterior side reinforcement channels are to remain applied to each Car as noted in the Drawing. All holes in any Car body are to be covered with 3/16" flat bar or plate with the vertical sides welded for securement. Lessee shall be responsible for all costs associated with the repair of any Car body modification related to the application and removal of the Rack and any damages to any Car body as a result of such Car operating with the Rack applied.

B. Lessee shall be responsible for all costs associated with the maintenance of the hydraulic snubbers applied to each Car. If any Car(s) are returned at the end of the Initial Term or prior to March 31, 2002, then, upon the return of any Car and within 10 days of receiving an invoice from Lessor, Lessee shall pay to Lessor \$415.00 per such Car for Lessor's costs associated with the application and removal of such hydraulic snubbers.

13. Lessee Reimbursement: Lessee shall, within 30 days of notification that Lessor has paid a bill for maintenance or repair for which Lessee is responsible, reimburse Lessor for such payment.

14. Taxes: Lessor shall reimburse Lessee for all federal, state and local property taxes assessed against or levied upon the Cars and paid by Lessee. Lessor may contest such taxes in appropriate proceedings and Lessee will cooperate with Lessor in such contest. Lessor shall not be liable for penalties or interest payable. Lessee shall forward to

Lessor upon receipt copies of all correspondence, notifications of proposed assessments and tax bills with respect to such property taxes. Upon Lessor's reasonable request Lessee shall provide Lessor with a draft of Lessee's property tax return before it is filed. Lessee shall be liable for all other taxes or governmental impositions with respect to the Cars.

15. **Rent:**

A. **Definitions:**

- (i) **"Eligible Lines"** means, with respect to the Cars on this Schedule, the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. If Lessee's lines expand through purchase, Lessee's merger with another railroad or otherwise or if Lessee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and for the purposes of Section 17, and CLM's required in Section 6 above shall continue to be provided to Lessor as if Lessee's lines were still only the Eligible Lines. If Lessee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Lessee as of the date such Schedule is executed by the parties, "Eligible Lines" shall mean only that part retained by Lessee.
- (ii) **"Revenue Rates"** means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period for each Car.
- (iii) **"Revenues"** means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on this Schedule on all railroad lines other than the Eligible Lines, including, but not limited to, hours ("Hourly Revenues") and mileage ("Mileage Revenues"), whether or not collected and received by the Record Keeper, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) **The "Guaranteed Base Rent"**

B. **Rental Payment:** Lessee shall pay rent to Lessor for each Car calculated as follows:

- (i) If Revenues earned from all Cars on this Schedule in any calendar year or applicable portion thereof are equal to or less than the Guaranteed Base Rent,
- (ii) If Revenues earned from all Cars on this Schedule in any calendar year or applicable portion thereof exceed the Guaranteed Base Rent,

16. **Revenue Shortfalls:** If, as a result of any action or inaction by Lessee (including but not limited to any abatement, reduction or offset claimed by a using or handling carrier), Lessor shall receive with respect to any calendar quarter amounts for the use or handling of the Cars on any railroad line other than the Eligible Lines which are less than the Revenues earned during such calendar quarter or are less than the Cars would have earned at the Revenue Rates, then Lessee shall pay to Lessor within 10 days of Lessor's request an amount equal to the difference between the amount actually received and the Revenues such Cars would have earned at the Revenue Rates.

17. **Lessee Operation of Other Lines:** If Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
18. **Third Party Agreements Affecting Revenues:** Without Lessor's prior written approval, Lessee shall not enter into any agreement with any party that affects the Revenues earned by any Cars.
19. **Final Calculations:** The calculations required in Section 15 shall be made within 5 months of the end of each calendar year ("Final Calculations"). Lessor shall, prior to making such Final Calculations, retain the Revenues and other payments received by it on behalf of Lessee. Lessor shall within 3 months after the end of each calendar quarter calculate on a quarterly year-to-date basis the approximate amounts due both parties. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation; provided, however, that within 20 days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
20. **If Car Hire Rates Not Prescribed:**
 - A. If the ICC ceases to prescribe car hire rates or significantly alters in a way adverse to Lessor the manner in which car hire rates are prescribed or the rates themselves, the parties shall in good faith negotiate to amend this Section and the applicable Schedules so that the amounts Lessor receives in rent after such ICC action are approximately the same as Lessor would have received had no such ICC action occurred. If such good faith negotiations are unsuccessful, Lessor may terminate the Agreement with respect to any or all of the Cars on any Schedule upon not less than 30 days written notice to Lessee at any time during the Agreement.
 - B. Lessor shall determine car hire rates offered to users of deprescribed Cars and shall, at Lessor's expense, prepare and present the owner's case in any arbitration or other proceeding held to resolve disputed car hire rates.
21. **Offset:** Lessor may retain any amounts owed to or collected on behalf of Lessee to offset any sums owed to Lessor by Lessee.
22. **Indemnities:** Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs, and expenses (including attorneys' fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession, custody or control, or would be the Lessee's responsibility as the "handling carrier" under the Interchange Rules and Car Hire Rules if the Cars were not bearing Lessee's reporting marks. The indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.
23. **Expiration or Termination:**
 - A. **Return of Cars:** Upon the expiration or termination of the Agreement with respect to any Car on this Schedule, Lessee shall return such Car to Lessor at the interchange point on Lessee's lines designated by Lessor ("Return Location"). Each Rack shall be removed as set forth in Section 12.A. above. If any Car(s) are returned prior to March 31, 2002, then Lessee shall pay the costs set forth in Subsection 12.B. Lessee shall bear any transportation costs incurred in moving any Car to the Return Location. If the Return Location is on Lessee's tracks, Lessee shall use best efforts to load such Car with freight and deliver it to a connecting carrier for shipment.
 - B. **Storage:** Lessee shall, at Lessor's option, provide up to 60 days free storage on its lines for any Car which is either on Lessee's lines at expiration or other termination or is subsequently returned to Lessee's lines.

C. **Holdover Rent:** Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car. If Lessor requests in writing the return of any Car and Lessee fails to use best efforts to return such Car, Lessee, upon written notice from Lessor shall pay rent on a monthly basis in an amount equal to the amount which would be earned by such Car if it were off the Eligible Lines 100% of the time and earning Hourly Revenues and Mileage Revenues at the Revenue Rates and Lessee shall in addition make all other payments and keep all obligations required of Lessee under this Agreement as though such expiration or other termination had not occurred. Nothing in the Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.

24. **Terms and Provisions:** Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

25. **Counterparts:** This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION, Lessor

BRANDYWINE VALLEY RAILROAD COMPANY, Lessee

By: Robert Kielbaso
 Title: Vice President Finance
 Date: 5/11/92

By: John W. Janowski
 Title: CONTROLLER
 Date: 5/4/92

EXHIBIT B TO SCHEDULE NO. 5

RUNNING REPAIRS

GONDOLAS

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	
Hand Brakes	
Brake Beams and Levers	
Truck Springs	